CF0000060797

(2)

Cri 2138/96

XII-16 (Jail)
C.J.P.K.—5,001-9-61

APPEAL OF PRISONER

Division Bench (Criminal)

No. 1078 Name गनपत

Father's name रामस्वरूप

Resident of ग्राम भरमा थाना लाखोली सरगुजा Age प्रथम

Sentenced to आजीवन कारावास on द्वितीय अपर सत्र न्यायाधीश अम्बिकापुर

Under section 302 भा.दं.वि. by

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 23.10.96

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Yes/No

High Court of Madhya Pradesh
JABALPUR
8 NOV 1996
Reg. No. 8/10.22
Recept Clerk
High Court, Jabalpur

No. 1078 Name गनपत

Continued in अम्बिकापुर Jail

No. 2626 dated 24/10/96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

संलग्न : निम्नानुसार निर्देशानुसार

Superintendent अधीक्षक Distt. & S.D-Jail
जिला जेल अम्बिकापुर (सरगुजा)

Date of receipt in C. J. M'S Office 24/10/96

Date of receipt of record to accompany 21/11/96

Memo of Appeal of the Appellate Court. माननीय उच्च न्यायालय जबलपुर

No. 2 Dated 21/11/96 198

Forwarded to the माननीय उच्च न्यायालय जबलपुर सादर प्रेषित

C.J.Magistrate

मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर, जिला सरगुजा (म.प्र.)

Date of receipt in Appliate Court

(P.T.O.)

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 2138/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2138 OF 1996

Appellant : Ganpat

Vs.

Respondent : State of Madhya Pradesh

Shri Praveen Das, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri M.P.S.Bhatia, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(09.03.2006)

L.C.BHADOO, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the impugned judgment dated 23.10.96 passed in S.T. No. 30/94 whereby the learned First Additional Sessions Judge, Ambikapur after holding the accused/appellant guilty for committing the murder of his wife Phoolmania convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

2. Case of the prosecution is that at about 7.30 p.m., in the evening of 17.09.93 the accused and his wife Phoolmania (since deceased) purchased a bottle of wine from P.W.-2 Vijay Prasad and they consumed the said wine in the house of Vijay Prasad. The accused demanded lime

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 203/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from his wife Phoolmania on which she replied that the lime was at the house. At this quarrel started between them and they came out of the house of Vijay Prasad and the accused assaulted *Phoolmania* on the road. The accused was doubting the fidelity of his wife and from there both of them went towards the rivulet. There, the accused attacked his wife Phoolmania and left her. P.W.-7 Ram Avtaar who was going for grazing buffalo in the forest, saw one person sleeping and then he went to the forest. In the morning at 6.00 a.m. when he was returning from the forest he saw that Ganpat was not there and the lady who was sleeping at night was still lying there. He did not say any thing to her and then he returned to his house. Thereafter Parsad came to him and he disclosed the same to him and based on that Parsad gave the report P-14 in police station Chalgali to the Assistant Sub Inspector M.R.Ratre who went to the scene of occurrence. After giving notice to the panchas P-1 he prepared panchnama P-15 and the body was sent for post mortem along with Constable Ram Dayal Paikra to Dr. Arvind Bhatt P.W.-5 and Dr. Kalpana Tonde who conducted the post mortem and prepared the post mortem report P-9. While in police custody the accused/appellant gave memorandum P-3 and in pursuance of that weapon of offence-club was recovered. The clothes of the accused i.e. lungi, underwear and baniyan were taken into possession under P-5. The weapon of offence-stone was recovered under P-6. The blood stained soil and plain soil were taken into possession from the place of occurrence under P-7. Patwari K.P.Jaiswal prepared the site plan P-11. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur from

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आदेश पत्रक

मामला क्रमांक Cr.A.No. 2138/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

where the First Additional Sessions Judge, Ambikapur received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused examined twelve witnesses. On the other hand statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

4. We have heard Shri Praveen Das, learned counsel for the accused/appellant and Shri U.N.S.Deo with Shri M.P.S.Bhatia on behalf of the State.

5. Having heard the counsel for the parties and after perusing the evidence we are of the considered opinion that the prosecution has utterly failed in connecting the accused with the commission of the murder of Phoolmania for the following reasons :

i. As per the prosecution case, on 17.09.93 the accused and the deceased purchased one bottle of wine from P.W.-2 Vijay Prasad and consumed the same and thereafter they started quarreling. Whereas Vijay Prasad has stated in his evidence that in the night of 19.09.93 accused Ganpat and his wife came to his house and purchased tobacco for one rupee and both were in a drunken condition and they started quarrelling on the ground of lime. At this accused Ganpat slapped his wife two-three times on which he (P.W.-2) asked them to go to their house and they went towards north side.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.2138/96 सन् 209

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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ii. This witness has not stated that the accused and the deceased purchased wine from him and thereafter they consumed the wine. He had stated that they were in drunken condition and that they came on 19/09/93 and the prosecution case is that the incident happened in the intervening night of 17th and 18th of September 1993.

iii. This witness has further stated in paragraph three that in the next day morning he came to know from the Patel Ramjeet and Sarpanch Shiv Kumar that Ganpat has murdered his wife and has thrown the body. It means that he came to know on 20th of September 1993 whereas the report was lodged by Parsad on 19.09.1993.

iv. Parsad has been examined as P.W.-6. who has stated that Phoolmania was his sister and she was married to the accused three-four months before the incident. He stated that Bandhu P.W.-1 informed him that there was a quarrel between his sister and brother in law. When he was going that side Ram Avtaar met him and informed him that body of a lady was lying at Dhoura Dand and when he went there he saw that his sister was lying dead. There was bleeding from the mouth, the teeth were broken and there were injuries on the body.

v. Whereas P.W.-7 Ram Avtaar who is said to have informed P.W.-6 Parsad, brother of the deceased, had stated that three years back when he went to graze the buffaloes in the forest he

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आदेश पत्रक

मामला क्रमांक Cr.A. No. 2138 सन् 96 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

saw that one person was sleeping on the other side of the river and when he was returning in the next day morning at about 6.00 a.m. he saw that Ganpat was not there and one lady was lying there. Then he came and informed Parsad. In the cross examination he has stated that on account of darkness that too, at about 1.00 a.m. he was not able to identify the person who was standing there. Therefore from his evidence it can not definitely be said that he saw the accused on the bank of the river and he has not stated that whether the person lying there was a lady.

vi. Moreover from his evidence, definitely it can not be said that it was intervening night of 17th and 18th of September 1993 whereas the matter was reported on 19.09.1993 and on the contrary P.W.-2 Vijay has stated that accused and deceased came to his house to purchase tobacco on 19th of September 1993.

6. Now coming to the evidence of P.W.-1 Bandhu who has stated that one year before, in the evening at about 6.30 p.m. he, after taking his meals was going to guard his crops of maize and was going to sleep, on the way near the house of Vijay Prasad, Ganpat and his wife met him. They were going towards the north side and in the morning at about 4.00 a.m. Parsad, brother of the deceased was searching for his sister and he informed him that at about 6.30 p.m. he saw Ganpat and his sister near the house of Vijay but the definite date has not been given by him

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मामला क्रमांक Cri. Ref. 2138/96 सन् 2006

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	whereas Vijay Prasad has stated that they came to his house on 19.09.1993.	
7.	From the above prosecution evidence there is no definite evidence that P.W.-1 Bandhu and P.W.-2 Vijay saw the accused and the deceased together in the evening of 17.09.93 because Bandhu P.W.-1 has not given any date whereas P.W.-2 Vijay has stated that in the evening of 19.09.93 the accused and deceased came to his house to purchase tobacco. Moreover from the evidence of Bandhu it appears that he informed the very next day morning to P.W.-6 Parsad but he reported the matter on 19th of September 1993. However no explanation in this regard has come forward in the prosecution case as to why the matter was reported on 19th of September 1993 at about 16.30 hrs. whereas Parsad came to know in the morning of 18th of September 1993	
8.	Moreover from the evidence of the doctor who conducted the post mortem on 21.09.93 had stated that no definite opinion can be given regarding the cause of death as the body of Phoolmania Bai was decomposed that too, in advanced stage therefore he was not able to ascertain the injuries on the body. Only one injury was ascertained as the mandible bone of the deceased was broken. Moreover the club, stone and clothes of the accused which were recovered from the possession and at the instance of the accused, there is no Forensic Science Laboratory report or Serologist Report that blood was found on these articles to connect the accused with the crime in question. Therefore, for the foregoing reasons we are of the considered opinion that the prosecution has utterly failed to connect the accused with the death of Phoolmania and as such the finding	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 2138 सन् 96/200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	of the trial Court convicting the accused for commission of the offence under Section 302 of the IPC cannot be sustained.	
9.	In the result, the appeal is allowed and the conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside and he is acquitted of the charge. The accused/appellant be set at liberty forthwith if not required in any other case.	
	Sd/- L.C. BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

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